



August 9, 2000

Mr. Charles M. Allen, II
Legal Office
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2000-3016

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139337.

The Richardson Police Department (the "department") received a request for information related to an investigation of an unattended death. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Section 552.301(b) requires the governmental body to "ask for the attorney general's decision and state the exceptions that apply no later than the 10th business day after the date of receiving the written request." The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You indicate that the department received the request for information on July 3, 2000. The department was required to submit to this office its request for a decision no later than July 18, 2000, the tenth business day from the date the department received the request for information.¹ Your request was postmarked July 19, 2000, more than ten business days after the date the department received the request for information. Consequently, you have not met your statutory burden under section 552.301(b) and the requested information is therefore presumed public. In the absence of a demonstration that the requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). You assert that the requested information is excepted from required disclosure pursuant to section 552.108 of the Government Code. Generally, the applicability of section 552.108 is not a compelling reason which would overcome the presumption that the information must be released. *See* Open Records Decision No. 177 at 3 (1977) (determining that the predecessor to section 552.108 was discretionary exception). Therefore, you may not withhold from disclosure the submitted information under section 552.108. The submitted information must be released, with the following exceptions.

We note that the submitted information contains driver's license numbers. Section 552.130 of the Government Code, which governs the release and use of information obtained from motor vehicle records, provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. For your convenience, we have marked the driver's license numbers you must withhold from disclosure under section 552.130 of the Government Code.

We also note that the submitted information contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no

¹In calculating the deadline for making the required submissions to this office, we assume that the department's offices were closed on July 4th in observance of the national holiday.

basis for concluding that the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We remind you, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 139337

Encl. Submitted documents

cc: Mr. James L. Hitzelberger
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P.O. Box 472286
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(w/o enclosures)